

MEETING RECORD

NAME OF GROUP: City Board of Zoning Appeals

DATE, TIME AND

PLACE OF MEETING: Friday, October 28, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10th Street, Lincoln, Nebraska

MEMBERS AND OTHERS

IN ATTENDANCE:

Members: Gene Carroll, George Hancock and Gerry Krieser. Bob Kuzelka and Tom Wanser absent.

Others: Terry Kathe, Mel Goddard and Dale Stertz (Building & Safety), Tonya Skinner (City Law Dept.), Brian Will and Michele Abendroth (Planning Dept.), applicants and other interested parties.

STATED PURPOSE

OF THE MEETING: Regular Meeting of the City Board of Zoning Appeals

Chair Gene Carroll called the meeting to order at 1:32 p.m.

Approval of the minutes of the September 30, 2005 meeting

Krieser moved approval of the September 30, 2005 meeting minutes, seconded by Hancock. Motion carried 3-0. Carroll, Hancock and Krieser voting 'yes'; Kuzelka and Wanser absent.

Appeal No. 05014 by Elaine Waggoner for a variance of the rear yard setback and for an exception to permit the reconstruction of a nonconforming/nonstandard building on property generally located at 2601 Antelope Circle.

PUBLIC HEARING

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Elaine Waggoner, attorney for the property owner, stated that the property owner, Rev. Beall, purchased the property prior to discovering that his wife had developed some severe health problems. She is required to do certain types of exercises in water. The Beall's are members of the Apostolic Faith, and the faith requires that Mrs. Beall not be seen in public in a bathing suit. There is an existing pad where they would like to place a hot tub for Mrs. Beall to do the exercises. He proceeded to build a room on the existing pad. During the process of building, he found out that he needed a building permit. The application was denied. They need a variance of 13 feet. She believes the property is peculiar in nature because it is a corner lot on a circle, so the lot has two front yards and two side yards or back yards. The 13 feet would not interfere with anyone and would be distinct to this property. There is also a rather high fence that would provide privacy for the neighbor. Rev. Beall intends to build this structure in compliance with all codes.

Hancock inquired about the work that has already been done. Waggoner stated that Rev. Beall started the project himself and was intending to hire a contractor at some point.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing, Carroll continued with staff questions.

Krieser asked if the patio that was there was in compliance. Kathe stated that the deck was in compliance,

but the roof was not. He added that there was never a permit taken out for a roof.

Carroll asked about the issue of a nonconforming building. Will stated that there is no finding that anything other than just the deck was legally permitted, so that eliminates either the nonconforming or the nonstandard issue. Carroll then asked about the determination of the side and rear yards. Will stated the a corner lot has frontage along both streets and the side and rear yards are determined at the time of construction. In this case, the south side was designated as the side yard and the rear yard is to the west. He added that this is not an unusual condition.

Hancock asked if the nonconforming use could be expanded to include nonstandard. Skinner replied that it could not, as there is a very specific definition in the code for nonconforming.

Carroll then closed the hearing and moved into Executive Session.

ACTION

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Carroll moved to deny the application, seconded by Krieser. Carroll stated that there is nothing peculiar, unusual or exceptional with the land. The fact that it was built without a building permit makes the situation worse. Under the law, they are required to deny the application.

Skinner advised the Board to make a motion on each separate issue, specifically the variance issue and the exception issue. Carroll withdrew the motion.

Carroll then moved to deny the variance to the setback requirement, seconded by Krieser. Hancock stated that the fact the lot is a corner lot does not qualify as peculiar, unusual or exceptional. Also, health conditions are not permitted to be considered as a qualifying hardship.

Motion to deny carried 3-0. Carroll, Hancock and Krieser voting 'yes'; Kuzelka and Wanser absent.

Carroll moved to deny the application for the exception to the reconstruction of a nonconforming building, seconded by Krieser.

Motion to deny carried 3-0. Carroll, Hancock and Krieser voting 'yes'; Kuzelka and Wanser absent.

The meeting was adjourned at 1:50 p.m.